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10/733,743	12/11/2003	Mariska van Ruyven	0318PR	2659

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EXAMINER

HAAS, WENDY C

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,743

Applicant(s)

VAN RUYVEN, MARISKA

Examiner

Wendy C. Haas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on a plant breeder's rights (PBR) application filed in The Netherlands on 14 March 2003. It is noted, however, that applicant has not filed a certified copy of the plant breeder's rights application as required by 35 U.S.C. 119(b) and (f).

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

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In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163 (a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More specifically:

- A. Applicant should specify that the claimed plant originated as a single plant from the stated cross. The cultivar must originate as a single plant to qualify for patent protection under 35 U.S.C. § 161 *et seq.*
- B. Applicant should clearly specify which color chart was used for the color descriptions set forth in the Specification. At present, the application states (RHS Color Chart) was used for the leaf coloration. A suggested addition might be: -- In the following description, color references are made to The Royal Horticultural Society Colour Chart, XX Edition, except where general terms of ordinary dictionary significance are used. --
- C. If possible, in the Brief Summary of the Invention, applicant should compare the claimed plant to its parent cultivar and to the most similar cultivar to the claimed plant known to the inventor. Comparisons stating how the claimed plant differs from other known cultivars are standard in United States Plant Patent Applications and lend more substantive meaning to the recitations regarding size, color, etc.

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D. Page 6, if possible, applicant should indicate the cultural and light conditions the photograph of the plant were taken under and the location where the photographs were taken. *See United States Plant Patent Number 15,174, Col. 2, lines 7-22 for an example.*

E. As the claimed plant produces flowers (page 5 states the claimed plant sets seed, therefore it must produce flowers), a photograph of the flowers should be provided. The claim is to the plant, as illustrated and described and a photograph is needed to provide as complete a botanical description of the claimed plant as is reasonably possible. Applicant is reminded to amend the Brief Description of the Drawings accordingly if an additional photograph is provided.

F. Page 7, applicant should remove the reference to "Figs. 1". The Figures are described in the Brief Description of the Drawings.

G. Page 7, applicant should specify the cultural conditions the claimed plant, as described in the Botanical Description of the Plant, was grown under. For example, applicant should provide the location of culture, whether it was indoors or outdoors, whether or not any photoperiodic treatment was given to the claimed plant, as well as typical and observed day and night temperatures, light levels and rainfall, if applicable.

H. Applicant should specify the name and patent status of the parent plant, if known, or set forth that it is an unnamed and unpatented proprietary cultivar, if accurate.

I. Applicant should describe the roots of the claimed plant.

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J. Applicant should specify whether or not the rooted cuttings were pinched in the production of the claimed plant. Pinching off the terminal apices increases branching of the plant and would alter the height to width ratio of the plant as observed.

K. Applicant should describe the typical and observed number of branches as well as their color, length, diameter and internode lengths.

L. Applicant should provide the typical and observed size at which the claimed plant flowers, if known.

M. Applicant should provide more detailed botanical description for the leaves of the claimed plant. The leaves are presently described as "heart-shaped". The appropriate botanical term for "heart-shaped" is – cordate --. Applicant should also provide the leaf apex, base and margin shapes, as well as provide the upper and lower leaf surface coloration and the typical and observed pattern of variegation. Applicant also states that "the leaves are covered with a gray RHS 188D powder". Applicant should specify whether this is a waxy bloom, a form of pubescence, or something else entirely, as it is not possible to tell what the "powder" is from the photograph provided.

N. Applicant must describe the flowers, reproductive organs and seeds of the claimed plant. At present, applicant describes the seeds as "very small". Applicant should provide the following information:

- Flower type and habit.
- Natural Flowering season.

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- *Kalanchoe sp.* are normally short-day plants, so this information is relevant to the culture and distinctiveness of the claimed plant.
- Time to flower.
 - The number of weeks of photoperiodic treatment needed to induce flowering in the claimed plant, if applicable.
- Rate and pattern of flower opening along the inflorescence.
- How long flowers last on the plant and as cut flowers.
- Flower diameter and depth.
- Number of flowers.
- Flower bud shape, length, diameter and color with reference to the employed color chart.
- Petal number, shape, apex shape, base, shape, margin shape, texture and upper and lower petal surface coloration with reference to the employed color chart.
- Information about the Reproductive organs.
 - Number of stamens and ovaries.
 - Anther shape and color.
 - Filament color, in general terms.
 - Pollen color and amount.
 - Pistil number
 - Style color in general terms.
 - Stigma shape.
 - Ovary size and ovary color.
- Information about the seeds.
 - Number of seeds.
 - Seed color.
 - Seed shape.

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- o Whether or not the seed is fertile.

O. Applicant should specify whether or not the claimed plant has been observed to be resistant to any known diseases of *Kalanchoe* and should provide the typical and observed high and low temperature tolerance of the claimed plant.

The above listing may not be complete. Applicant should carefully compare the claimed plant with the botanical descriptions set forth in the specification to ensure completeness and accuracy and to distinguish the plant within this expanding market class. Any further botanical information should be imported into the specification, as should any additional or corrected information relative to same.

Claim Rejection
35 USC § 112, 1st and 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for reasons set forth in the Objection to the Disclosure Section above.

Conclusion

No claim is allowed.

References Cited

The references cited but not applied in any rejection herein are made of record to show the state of the art.


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Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy C. Haas whose telephone number is (571) 272-0976. The examiner can normally be reached on Monday through Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (571) 272-0811. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


W. C. Haas
Patent Examiner
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